

November 13, 2001

Ms. Magalie R. Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., TW-A325  
Washington, D.C. 20554

Re: Motion to Accept Late-Filed Comments  
CC Docket No 96-45  
FCC No.01-J-1

Dear Ms. Salas:

The National Telephone Cooperative Association hereby motions the Federal Communications Commission to accept the attached late-filed comments and include them as part of the record in the above referenced proceeding.

Due to a clerical error, NTCA believed the comments were due on November 15, rather than November 5. NTCA regrets the error, but believes that no party will be prejudiced by the acceptance of the comments. The reply comment period in this proceeding is a full 60 days and NTCA will send courtesy copies to those parties that filed initial comments.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Jill Canfield

Jill Canfield  
Regulatory Counsel

Attachments

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service Seeks Comment on	)	CC 01-J-1
Review of the Definition of Universal Service	)	

COMMENTS  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

**I. INTRODUCTION**

The National Telephone Cooperative Association (NTCA) submits these comments in response to the Commission's Public Notice in the above referenced proceeding. NTCA is a national association representing more than 500 local exchange carriers. NTCA's members provide telecommunications services to end users and interexchange carriers throughout rural America. All NTCA members are "rural telephone companies" as defined in the Telecommunications Act of 1996 (the "Act").<sup>1</sup>

NTCA believes that the definition of universal service should be modified to include equal access interexchange services. The public benefits from the increased flexibility and the ability to comparison shop for a competitive long distance carrier that equal access provides. Equal access fits squarely within the universal service definition criteria and public policy dictates that it be included.

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<sup>1</sup> 47 U.S.C. §153(47).

NTCA also believes that the Commission should begin to consider including access to advanced services in the definition of universal service in a limited way. Advanced services access is becoming widely available. However, there are, and will remain, high cost areas of this country for which providing advanced services access is prohibitively expensive. The Commission should use this opportunity to consider creative ways to increase advanced services deployment and subscribership.

## **II. THE COMMISSION SHOULD MODIFY THE DEFINITION OF UNIVERSAL SERVICE TO INCLUDE EQUAL ACCESS TO INTEREXCHANGE SERVICES.**

The Commission should add equal access to interexchange services to the list of services that are eligible for universal service support. Equal access permits a consumer to access the long distance carrier of the consumer's choice by dialing a 1+ number. It fits squarely into the universal service criteria put forth in Section 254(c) of the Act.<sup>2</sup> Further, despite arguments to the contrary, there is nothing in the Act that prevents the Commission from adding the consumer choice that comes with equal access to the list of supported services. Equal access enhances choice and competition and is good for the American consumer.

### **A. Equal access fits the statutory criteria upon which the universal service definition is to be based.**

The legislative history of the Telecommunications Act of 1996 instructs the Commission and the Joint Board that the definition of universal service should be based on a consideration of the four criteria set forth in the Act. Section 254(c)(1)(A)-(D) states that the Commission and the Joint Board must "consider the extent to which . . . telecommunications services" included in the definition of universal service:

- (1) are essential to education, public health, or public safety;
- (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (3) are being deployed in public telecommunications networks by telecommunications carriers; and
- (4) are consistent with the public interest, convenience and necessity.

Equal access as part of the universal service definition is consistent with each of these criteria.

First of all, access to the interexchange carrier of the consumer's choice is essential to education, public health and public safety. Subscribers who live in rural areas are particularly dependent on interexchange service to reach medical and emergency services, schools and local government offices. Equal access gives the consumer the opportunity to shop for the long distance carrier particularly suited to his or her needs. The customer may make a choice of carrier based on factors including reliability or cost. Affordable, reliable long distance service is essential to the rural American consumer's ability to make calls for his or her personal and family's care and well-being. Without the choice equal access provides, the consumer may end up with a long distance service that the consumer cannot afford or upon which he or she cannot depend.

Criteria (2) and (3) may be combined. Equal access is enjoyed by a majority of residential customers and most telecommunications carriers have deployed the service. The vast majority of residential customers expect and have a choice of interexchange services. Local exchange carriers provide consumers with a choice of interexchange carriers in all but a few areas where interexchange carriers have not requested balloting. Throughout the country, residential consumers may review the advertisements, compare the plans and choose a long distance service suited to their calling needs. Residential

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<sup>2</sup> 47 U.S.C. § 254(c)

consumers benefit from the choice. They can make decisions based on price or service quality. Without equal access consumers do not receive the benefits of competition.

The fourth of the listed criteria is a general statement about the public interest. It is not in the public interest to encourage carriers to avoid giving consumers a choice between long distance carriers. Clearly, the public benefits from the choice equal access provides. A carrier that does not offer equal access deprives its customer of choice. The customer is forced to use whatever interexchange carrier the local carrier deems appropriate for the carrier's purposes or benefit. The consumer is given no opportunity to comparison shop and does not enjoy the benefits of competition.

Some may tout "dial around" numbers as a solution for customers unable to choose their long distance carrier. Dial around numbers are a scarcely used, unnecessary step for a customer in a hurry to reach the called party. Dial around numbers take time and require the caller to remember several numbers in addition to the number for the party they are trying to reach. They do not offer the consumer a true choice among interexchange carriers. Only equal access to interexchange carriers gives the public the full benefits of competition.

**B. Nothing in the Telecommunications Act of 1996 precludes the Commission from adding equal access to the list of supported services.**

In its *First Report and Order*<sup>3</sup> on universal service, the Commission declined to include equal access to interexchange service among the services supported by universal service mechanisms.<sup>4</sup> Its decision centered on section 332(c)(8) which prohibits any requirement that CMRS providers offer "equal access to common carriers for the

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<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997).

<sup>4</sup> *Id.*, ¶ 78.

provision of toll services.”<sup>5</sup> The Commission’s reasoning on this matter, however, was specious.

The requirements of section 332(c)(8) are unrelated to the universal service provisions of the Act. Making universal service support conditioned upon the provision of equal access in no way “requires” a CMRS provider to offer it.

The Commission seemed to understand that conditioning support on a service is not the same as requiring it when it considered access to emergency services in its *First Report and Order*.<sup>6</sup> The Commission concluded that access to E911 service should be supported by universal service mechanisms, but also recognized that “the Commission does not currently require wireless carriers to provide access to E911 service.”<sup>7</sup> The Commission determined that access to emergency services was important enough that support would be provided “for those carriers **that are providing it**.”<sup>8</sup> As the Commission made perfectly clear, E911 requirements come from a Commission action separate and distinct from the universal service order. The tying of a service to universal service support in no way “requires” a carrier to provide it.<sup>9</sup>

In its *First Report and Order*, the Commission found that supporting equal access would “undercut local competition and reduce consumer choice,”<sup>10</sup> but failed to explain how it would do so. To the contrary, equal access increases competition and consumer choice. The consumer, rather than the carrier, chooses the interexchange carrier.

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<sup>5</sup> Section 332(c)(8) states that CMRS providers shall not be “required to provide equal access to common carriers for the provision of toll service.” 47 U.S.C. § 332(c)(8).

<sup>6</sup> *First Report and Order*, ¶ 72.

<sup>7</sup> *Id.*, ¶73.

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> The Commission provided that a carrier incapable of providing E911 may petition its state commission for a transition period. The Commission could provide for a similar transition procedure for carriers currently incapable of providing equal access.

<sup>10</sup> *First Report and Order*, ¶79.

Interexchange carriers are forced to keep their rates competitive to retain customers. The CMRS providers are capable of providing equal access at minimal cost. Those that wish to be designated telecommunications carriers should be required to provide their customers equal access services so that the customer obtains the benefits of choice.

### **III. IT IS APPROPRIATE FOR THE COMMISSION TO BEGIN STUDYING HOW ADVANCED SERVICES WILL FIT INTO THE DEFINITION OF UNIVERSAL SERVICE**

NTCA believes it is appropriate for the Commission to begin to consider adding access to advanced services to the definition of universal service. American consumers expect affordable high-speed connections to the Internet to be available at their request and the Commission should encourage carriers to meet that demand.

#### **A. Access to advanced services is becoming widely available, but there will always be customers for whom the cost of deployment is too high**

The Telecommunications Act directs the Commission to consider the extent to which a service is being deployed by telecommunications carriers in determining whether to include the service in the definition of universal service.<sup>11</sup> The Yankee Group estimates that by the end of this year three out of four households will have high-speed Internet access available to them.<sup>12</sup> In a recent speech, Chairman Powell estimated broadband availability to be almost 85%.<sup>13</sup> NTCA recently surveyed its members about their broadband deployment. Preliminary results show that 74% of respondents currently offer their customers bandwidth in excess of 200 kbps, the FCC's definition of broadband. Forty-six percent offer bandwidth in excess of 1Mbps. Access to advanced

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<sup>11</sup> 47 U.S.C. § 254(c)

<sup>12</sup> *Residential Broadband: Provisioning Cable Modem Service*, Yankee Group, November 1, 2001

<sup>13</sup> Remarks of Michael K. Powell, Chairman Federal Communications Commission, National Summit on Broadband Deployment, Washington, D.C. (October 25, 2001).

services is becoming widely available. Telecommunications carriers are deploying broadband.

Despite the good news about advanced services deployment, there will always be areas of the country where the cost of deployment is too high. Rural providers, in particular, are impacted by the high cost of providing broadband service. Sixty-three percent of NTCA survey respondents identified cost as a major impediment to offering broadband to all telephone subscribers. Deployment to the last 10 or 15% of the country will never be cost effective. Some areas of the country are too remote or the terrain is too difficult. Households in these areas will not see advanced services absent some sort of incentive or support for the carriers that serve them.

**B. Despite broadband availability, subscribership remains low**

The Commission must also consider the extent to which a service has been subscribed to by a substantial majority of residential consumers in determining whether or not to make the service part of the universal service definition.<sup>14</sup> According to the Commission, subscribership to high-speed services for Internet access increased by 63% during the second half of the year 2000, to a total of 7.1 million lines in service.<sup>15</sup> At the end of last year, the presence of high-speed service subscribers was reported in fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands, and in 75% of the zip codes in the United States.<sup>16</sup> The demand for advanced services is growing at a phenomenal rate. However, according to Chairman Powell, while most households have

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<sup>14</sup> 47 U.S.C. § 254(c)

<sup>15</sup> *High-Speed Services for Internet Access: Subscribership as of December 31, 2000*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (August 2001).

<sup>16</sup> *Id.*



advanced services availability and subscribership is increasing, only 12% of household currently subscribe.<sup>17</sup>

**C. The Commission should consider creative ways to increase advanced services deployment and subscribership**

One of the Commission's primary objectives is achieving ubiquitous availability of service at affordable rates for all Americans. Chairman Powell emphasized, "we have a golden opportunity with broadband to deploy new services to all Americans . . ."<sup>18</sup> Public policy considerations dictate that the Commission should act if subscribership to advanced services remains low. The Commission should begin considering redefining universal service in a limited way that will help the carriers deploy advanced services and make them affordable for the American consumer.

It is important that the Commission not create deployment mandates without consideration of funding. As Powell stated, the Commission should not "place orders for public policy widgets and expect them to be delivered at provider expense."<sup>19</sup> Rather than unfunded mandates regarding deployment, the Commission should consider incentives for carriers to deploy broadband or support to make service affordable to all Americans.

For example, the Commission may consider providing additional universal service funding to carriers in high cost areas that reach certain penetration rates, for example funding at x level could be available to carriers who make advanced service available to at least 80% of all of their subscribers.. This would not take funding away from any carrier that currently receives funding. It would merely provide an incentive for

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<sup>17</sup> Remarks of Michael K. Powell (October 25, 2001).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

carriers covering less densely populated areas to speed deployment and a way for carriers to recoup some of their significant investment.

#### **IV. CONCLUSION**

For the above-mentioned reasons, NTCA submits that the Commission should redefine universal service. Equal access to interexchange services fits the list of criteria to be considered when defining universal service and the public will benefit from the choice of carrier provided by equal access. NTCA believes that it is also appropriate for the Commission to begin considering adding access to advanced services to the universal service definition in a limited way. Rollout of advanced services may speed up if the Commission provides an incentive for carriers in high cost areas to provide service.

Respectfully submitted,

NATIONAL TELEPHONE  
COOPERATIVE  
ASSOCIATION

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November 13, 2001

## CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, FCC 01-J-1 was served on this 13<sup>th</sup> day of November 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

/s/ Gail C. Malloy

Gail C. Malloy

Chairman Michael Powell  
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